

1 **JOSEPH W. CHARLES, P.C.**
2 **5704 West Palmar Avenue**
3 **Post Office Box 1737**
4 **Glendale, Arizona 85311-1737**
5 **Telephone: (623) 939-6546**
6 **Fax: (623) 939-6718**
7 **Email: LawOffice@joecharles.com**

8 **JOSEPH W. CHARLES**
9 **State Bar No. 003038**
10 **Attorney for Debtor/Plaintiff**

11
12 **IN THE UNITED STATES BANKRUPTCY COURT**
13 **FOR THE DISTRICT OF ARIZONA**
14

15 In re:

16 **ROGER SCHWANKE,**

17 **Debtor.**

Chapter 13 Proceedings

Case No. 2:10-bk-00482-GBN

18 **ROGER SCHWANKE,**

19 **Plaintiff,**

20 **vs.**

STIPULATED JUDGMENT

21 **BAC HOME LOANS SERVICING, LP,**
22 **Defendants; and EDWARD J. MANEY,**
23 **CHAPTER 13 TRUSTEE,**

24 **Defendants.**

25 This matter comes before the Court on stipulation to judgment between the
26 parties. It is agreed that Plaintiff shall have judgment against the Defendant, BAC
27 HOME LOANS SERVICING, LP.
28

THE COURT FINDS as follows:

1. That the Plaintiff is entitled to a stipulated judgment in this matter.

2. That the value of the real property located at 17580 W. Marconi Avenue, Surprise, Arizona 85388 (the "Property"), is \$208,500.00. The Property is secured by a first mortgage lien in favor of BAC HOME LOANS SERVICING, LP in the amount of \$257,924.66. The Property is secured by a second mortgage lien in favor of the Defendant in the amount of \$38,653.00.

3. That the Defendant's second mortgage lien is unsecured as there is no equity in the Property to attach the mortgage lien.

Based on the findings by this Court:

IT IS HEREBY ORDERED that a judgment be entered in favor of the Plaintiff and against Defendant, BAC HOME LOANS SERVICING, LP.

IT IS FURTHER ORDERED that the Defendant's second mortgage lien is unsecured and void.

IT IS FURTHER ORDERED that Defendant's claim shall be allowed as a non-priority, general, unsecured claim and shall be paid as such in accordance with the Plaintiff's Plan.

IT IS FURTHER ORDERED the avoidance of Defendant's second lien is contingent upon the Plaintiff's completion of the Chapter 13 Plan and the Plaintiff's receipt of a Chapter 13 discharge.

IT IS FURTHER ORDERED the Defendant shall retain its lien for the full amount due under the subject loan should the subject property be sold or should a refinance take place prior to the Plan completion and entry of a discharge.

1 IT IS FURTHER ORDERED that Defendant shall retain its lien for the full
2 amount due under the subject loan in the event of either the dismissal of the
3 Plaintiff's Chapter 13 case, or the conversion of the Plaintiff's Chapter 13 case to
4 any other Chapter under the United States Bankruptcy Code.

5 IT IS FURTHER ORDERED that in the event that any entity, including the
6 holder of the first lien on the subject property, forecloses on its security interest and
7 extinguishes Defendant's lien prior to the Plaintiff's completion of the Chapter 13
8 Plan, and receipt of a Chapter 13 discharge, Defendant's lien shall attach to the
9 surplus proceeds of the foreclosure sale for the full amount of the subject loan
10 balance at the time of the sale.

11
12 IT IS FURTHER ORDERED that this Order may be recorded and shall have
13 the effect of voiding the lien in the public records and this Order is a final Order.
14

15 DATED this _____ day of _____, 2010.

16 JOSEPH W. CHARLES, P.C.

BAC HOME LOANS SERVICING, LP

17
18 BY: 

BY: 

19 Joseph W. Charles
20 Attorneys for Debtor/Plaintiff

Michelle Reinhard
Mortgage Loan Operations Manager
BAC Home Loans Servicing, LP
Defendant

21
22
23 SIGNED AND DATED ABOVE

24
25
26 Honorable George B. Nielsen, Jr.
United States Bankruptcy Court